



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-832]

Pure Magnesium from the People's Republic of China: Preliminary Results of 2011-2012 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (“PRC”). The period of review (“POR”) is May 1, 2011, through April 30, 2012. The review covers two exporters of subject merchandise, Tianjin Magnesium Metal Co., Ltd. (“TMM”) and Tianjin Magnesium International Co., Ltd. (“TMI”). However, the Department preliminarily finds that TMI did not have reviewable transactions during the POR. Based on an analysis of the facts of this case and the evidence on the record, the Department preliminarily finds that TMM and Company A¹ are appropriately collapsed and treated as a single entity for purposes of calculating a dumping margin in this proceeding.² In addition, we preliminarily determine that TMM/Company A made sales of subject merchandise at less than normal value during the POR.

EFFECTIVE DATE: Insert date of publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Andrew Medley, AD/CVD

Operations, Office 8, Import Administration, International Trade Administration, Department of

¹ The identity of “Company A” is proprietary. See Memorandum from Andrew Medley, International Trade Compliance Analyst, through Melissa Skinner, Director, Antidumping and Countervailing Duty Operations, Office 8, to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, entitled, “2011-2012 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Preliminary Affiliation and Collapsing Memorandum,” dated concurrently with this memorandum (“Affiliation and Collapsing Memorandum”).

² See Affiliation and Collapsing Memorandum.

Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5848 or (202) 482-4987, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.³ Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Preliminary Determination of No Shipments for TMI

TMI submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.⁴ Consistent with its practice, the Department asked U.S. Customs and Border Protection (“CBP”) to conduct a query on potential shipments made by TMI during the POR; CBP did not provide any evidence that contradicts TMI’s claim of no shipments.⁵ We note that we will continue to examine TMI’s no shipment certification

³ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled, “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Pure Magnesium from the People’s Republic of China,” dated concurrently with this notice (“Preliminary Decision Memorandum”) for a full description of the Scope of the Order.

⁴ See letter from TMI, entitled, “Pure Magnesium from the People's Republic of China; A-570-832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,” dated July 13, 2012.

⁵ See CBP Message Number 2261308, dated September 17, 2012.

during this review. Based on TMI's certification and our analysis of CBP information, we preliminarily determine that TMI did not have any reviewable transactions during the POR.⁶

Preliminary Determination of Affiliation and Collapsing

Based on the evidence presented in TMM's questionnaire responses, we preliminarily find that TMM and Company A are affiliated, pursuant to section 771(33)(E) of the Act.⁷ In addition, based on the evidence presented in the questionnaire responses, we preliminarily find that TMM and Company A should be treated as a single entity for the purposes of this review. This finding is based on the determination that there is significant potential for manipulation of price between the parties pursuant to the criteria laid out in 19 CFR 351.401(f),⁸ due to the high level of common ownership, interlocking boards and managers, and intertwined operations. For further discussion of the Department's affiliation and collapsing decision, *see* the Affiliation and Collapsing Memorandum.

Furthermore, the Department requests that TMM disclose the name of its affiliate, Company A, as public information for the remainder of this proceeding. Otherwise we will be

⁶ In addition, the Department finds that, consistent with its recently announced refinement to its assessment practice in non-market economy ("NME") cases, it is typically appropriate not to rescind the review in part in this circumstance, but rather to complete the review with respect to TMI. *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011) and the "Assessment Rates" section, below.

⁷ The fact that TMM and Company A are affiliated through common ownership is uncontested on the record.

⁸ While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000), and accompanying IDM at Section C; and *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004), and accompanying IDM at Comment 1; *see also Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458 (January 10, 2012), where the Department stated that: "The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a "reasonable interpretation of the {antidumping duty} statute." *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d. 1323, 1338 (CIT 2003) (*Hontex*). The CIT further noted that "to the extent that Commerce has followed its market economy collapsing regulations the {non-market economy (NME)} exporter collapsing methodology is necessarily permissible." *See id.* at 1342. Unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012).

unable to assign the collapsed entity a joint cash deposit rate under both company names, and may determine the cash deposit rate for TMM by relying upon adverse facts available..

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the “Act”). Export prices were calculated in accordance with section 772 of the Act. Because the PRC is a NME within the meaning of section 771(18) of the Act, normal value (“NV”) has been calculated in accordance with section 773(c) of the Act. Specifically, the respondents’ factors of production have been valued using import data from the Philippines, which is economically comparable to the PRC and is a significant producer of comparable merchandise. To determine the appropriate comparison method, the Department typically conducts a “differential pricing” analysis and has preliminarily determined to use the average-to average method in making comparisons of export price and normal value. However, in this review, because there is only one sale, there are not two observations with which to test for whether a pattern of prices that differ significantly exists. Accordingly, the Department is not conducting a differential pricing analysis and is calculating TMM’s dumping margin using its standard method by comparing the weighted-average normal value to the weighted-average export price.⁹

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of

⁹ See Preliminary Decision Memorandum.

Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department has determined that the following preliminary dumping margin exists:

Exporter	Weighted-Average Dumping Margin
Tianjin Magnesium Metal Co., Ltd. ("TMM") and Company A	339.60

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.¹⁰ Rebuttals to written comments may be filed no later than five days after the written comments are filed.¹¹

Any interested party may request a hearing within 30 days of publication of this notice.¹² Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.¹³

¹⁰ See 19 CFR 351.309(c).

¹¹ See 19 CFR 351.309(d).

¹² See 19 CFR 351.310(c).

¹³ See 19 CFR 351.310(d).

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.¹⁴ Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.¹⁵

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

¹⁴ See, e.g., *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵ See 19 CFR 351.301(c)(3).

For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁶

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.¹⁷

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

¹⁶ In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

¹⁷ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for TMM/Company A, which have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent;¹⁸ and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

¹⁸ See *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008).

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

May 31, 2013_
(Date)

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Summary

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20. [FR Doc. 2013-13702 Filed 06/07/2013 at 8:45 am; Publication Date: 06/10/2013]